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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - CENTRAL DIVISION  
HONORABLE GEORGE H. WU, U.S. DISTRICT JUDGE

MOOG INC.,  
Plaintiffs,  
vs. Case No. CV 22-9094  
SKYRYSE, INC., et al,  
Defendants.

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REPORTER'S TRANSCRIPT OF  
MOOG'S MOTION TO FILE AMENDED COMPLAINT  
MOOD'S MOTION TO ENFORCE TRO  
Thursday, June 29, 2023  
12:46 p.m.  
LOS ANGELES, CALIFORNIA

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1                   **LOS ANGELES, CALIFORNIA; THURSDAY, JUNE 29, 2023**

2                                   **12:46 p.m.**

3                                   **--oOo--**

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6                   THE COURT: Let me call the matter of *Moog versus*  
7 *Skyryse*.

8                   Let me have appearances starting with plaintiff's  
9 counsel first.

10                  MS. ANDOH: Good afternoon, Your Honor. Rena Andoh  
11 and Kazim Naqvi for plaintiff.

12                  THE COURT: All right. Good afternoon.

13                  MR. NAQVI: Kazim Naqvi, Sheppard Mullin for the  
14 plaintiff.

15                  THE COURT: For the defense?

16                  MR. GROSS: Your Honor, Gabe Gross, Latham Watkins  
17 for the defendant and counter-defendant Skyryse.

18                  MS. HORN: Good afternoon, Your Honor. Rachel Horn  
19 for Skyryse.

20                  THE COURT: We are here on two motions.

21                  One was a motion for leave to file an amended complaint  
22 and the other one is a continuation of the motion to enforce  
23 compliance, and also -- I guess, that's the easiest to  
24 summarize that one.

25                  I will do the motion for leave to file the amended

1 complaint first. I issued a tentative on both of these as to  
2 that particular motion.

3 Does anybody want to argue anything?

4 MR. NAQVI: Yes, Your Honor. This is Kazim Naqvi  
5 for the plaintiff, briefly.

6 We thank the Court for its tentative ruling. We  
7 understand that the Court is inclined to grant leave to amend  
8 as to the conversion claim and a portion of the implied  
9 covenant claim.

10 We appreciate the Court's directives. We are prepared  
11 to submit on the tentative, and we will amend the pleading,  
12 accordingly.

13 THE COURT: Let me ask the defense, do you want to  
14 see what they amend and then respond with the new motion or  
15 what?

16 MS. HORN: Your Honor, we have some argument for  
17 today.

18 THE COURT: I can't hear you.

19 MS. HORN: May I remove my mask?

20 I would like to argue today, if that is all right?

21 THE COURT: Sure.

22 MS. HORN: So we also thank the Court for its  
23 tentative. I want to cover three things in my time today.

24 So first thought with respect to the conversion claim,  
25 we do agree, Your Honor, that is insufficient as currently

1   pleaded, but I want to clarify that Moog can't save that claim  
2   just by, for instance, doing a better job of delineating the  
3   other non-trade secret data that it alleges was taken from the  
4   trade secret data.

5           That claim just can't be saved through amendment.

6           THE COURT: When you say it can't, why couldn't it;  
7   in other words, you have saying factually they can't say  
8   anything.

9           Why is it that that is so completely foreclosed?

10          MS. HORN: Right. That is because the weight of  
11   case law in California emphasizes that there is no ability to  
12   plead a conversion claim for confidential information that does  
13   not arise to the level of a trade secret.

14          Your Honor was right to point to the *Mattel* case on that  
15   point, that was cited in the tentative in page 7.

16          In that case there is a cogent discussion of the fact  
17   that as a matter of law, CUTSA supercedes the conversion claim  
18   to the extent it is based on misappropriation of confidential  
19   information that is not a trade secrete.

20          And there are a number of cases that we cited in our  
21   brief that follow that reasoning.

22          THE COURT: Let me stop you for a second.

23          MS. HORN: Sure.

24          THE COURT: There is no argument at this point then  
25   that this application is not timely?

1 MS. HORN: Not at this point, Your Honor.

2 THE COURT: Then let me ask the plaintiff's counsel,  
3 how would you amend on this particular issue?

4 MR. NAQVI: Sure, Your Honor. We think that the  
5 Court's citation to the *Byton North America Corporation* case on  
6 page 7 of the tentative ruling is on point. The Court found it  
7 to be instructive.

8 That case has similar facts where there was alleged  
9 misappropriation of trade secret data and then also theft of  
10 non-trade secret data.

11 We have pointed out to the Court in the proposed amended  
12 pleading and also in the briefing that there is a very clear  
13 delineation here.

14 In our pleading we intended to very clearly define the  
15 non-trade secret data.

16 THE COURT: Give me an example of what you are  
17 referring to when you say "non-trade secret data"?

18 MR. NAQVI: This could be information that Moog has  
19 both -- that it owns itself, and that it owns pursuant to  
20 contracts with third parties; that it may not designate trade  
21 secret protection for, but it's still proprietary information  
22 that it doesn't disclose to other third parties.

23 THE COURT: All right. Let me ask the defense  
24 counsel, what is your response to that?

25 MS. HORN: Sure. Again, we point to the *Mattel*

1 case, which makes clear that there is no property right under  
2 California law in confidential information outside of trade  
3 secret law.

4 That is on page 996 of that case.

5 With respect to the *Byton* case, respectfully, Your  
6 Honor, we believe that case is an outlier and not consistent  
7 with the weight of the case law, including *Mattel* and the  
8 subsequent cases.

9 The point that the --

10 THE COURT: Well, if it's an outlier, then there is  
11 still a possibility.

12 MS. HORN: Your Honor, respectfully --

13 THE COURT: Can I basically deny leave to amend if  
14 there is some case law, even if it's -- as you characterize it  
15 -- an outlier or whatever it is?

16 MS. HORN: Respectfully, we believe that that case  
17 is wrongly decided consistent with the cogent reasoning in the  
18 *Mattel* case and the *SunPower* case.

19 It all goes into the reasoning behind the enactment of  
20 CUTSA, and the point of CUTSA being to provide unitary  
21 definitions of trade secret misappropriation and making clear  
22 that information isn't property unless some positive law makes  
23 it so.

24 THE COURT: Okay.

25 MS. HORN: And, Your Honor, we also submit this

1 makes sense as just a matter of first principle.

2           There are specific IP schemes. There is trade secret  
3 law, there is copyright law, patent law, they each have their  
4 own requirements for protection of intangible information.

5           And plaintiff can't get around those requirements and  
6 create a new property right just by saying this intangible  
7 information was converted to cover anything that doesn't meet  
8 the requirements of those of IP regimes.

9           THE COURT: All right. What else do you want to  
10 argue?

11           MS. HORN: With respect to the implied covenant  
12 claim, I have two points I want to argue.

13           First, on the point that Moog sufficiently pleaded a  
14 breach of implied covenant based on the hiring of 20 Moog  
15 employees, so we think that is incorrect.

16           The NDAs that are at issue had nothing to do with  
17 hiring. Those claims are futile.

18           The NDAs at issue are actually focused on confidential  
19 information and the exchange of confidential information. They  
20 are made apart of the pleadings. They are incorporated into  
21 the pleadings, at Exhibit C and E of the proposed amended  
22 complaint and there is no dispute that they contain no  
23 prohibition -- not even a mention of hiring of employees.

24           THE COURT: Well, that is why they are not arguing a  
25 breach of contract on those.



1           That's why they are arguing the implied covenant because  
2   if it was specifically provided for in the contract, then that  
3   is what the case law says, you can't create an implied covenant  
4   when the provisions are specifically provided for by the  
5   contract.

6           MS. HORN: That is true, Your Honor, but the duty  
7   has to be fairly inferable from the contract as well.

8           And on that point, the Court can find -- can examine the  
9   NDAs -- should find that as a matter of law an implied duty to  
10  not hire Moog employees is not fairly inferable from those  
11  contracts.

12          I would point Your Honor to the *Lodging Solutions* case  
13  which actually supports denying leave to amend here.

14          I know Your Honor read that case, and you didn't find it  
15  persuasive, but I think it's right on point here, and I would  
16  like to explain that.

17          THE COURT: All right.

18          MS. HORN: So in *Lodging Solutions*, there was in  
19  fact a valid enforceable nondisclosure agreement just like  
20  there is in this case.

21          Unlike this case, in *Lodging Solutions* there was also a  
22  no-poaching provision in that case.

23          The Court there found that the no-poaching provision was  
24  unenforceable and effectively struck that provision, leaving an  
25  enforceable otherwise NDA with confidentiality obligations, so

1 that is very similar to our case.

2 Then what the Court did with that was it dismissed on a  
3 motion to dismiss, the plaintiff's implied covenant claim,  
4 because the remainder of the NDA without the no-hire provision  
5 did not fairly imply a duty not to hire. So we submit that is  
6 exactly on point here.

7 THE COURT: All right. Any response from the  
8 plaintiff?

9 MR. NAQVI: Yes, Your Honor.

10 We see that the Court properly distinguished the *Lodging*  
11 *Solutions* case on page 13 of its tentative.

12 I will also point out that Moog's proposed implied  
13 covenant claim is not -- as to the hiring aspect -- it's not  
14 limited to the hiring of any one employee.

15 We properly alleged that the hiring of 20 Moog employees  
16 was for the purpose of accessing and using -- improperly using  
17 confidential information that was exchanged between the parties  
18 for a purpose that was not permitted under the NDAs.

19 So we have properly alleged that the Court indicated in  
20 its tentative ruling that the purposes of the NDAs were  
21 subverted and undermined through this very large-scale hiring.  
22 It's not about the hiring of any one employee.

23 THE COURT: I think I understand.

24 Anything else from either side on that motion?

25 MS. HORN: On the implied covenant claim, as it

1 relates to the data that was allegedly taken following the  
2 parties' business relationship, so this is pages 16 and 17,  
3 Your Honor's tentative found that claim to be futile, but  
4 suggested that they could replead to draw a clear distinction  
5 between information that was taken during the terms of the NDA  
6 and information taken afterward.

7 But there is actually no set of facts here that Moog to  
8 plead again when it tries to make that claim viable.

9 THE COURT: Well, my inclination to let them try on  
10 all of these, but not preclude the defendant for making the  
11 same arguments.

12 I just want to know a little bit clearer what exactly  
13 the plaintiffs are trying to do in these particular areas, but  
14 I understand the arguments made, and in fact, I am kind of  
15 teetering on the -- not the hiring -- I can't remember which  
16 one it is now -- the first one.

17 MS. HORN: Conversion claim, Your Honor?

18 THE COURT: I'm kind of teetering on that one, but I  
19 want to see what they are going to attempt to raise, and I will  
20 I will entertain the motion. I presume you are going to make  
21 one again?

22 MS. HORN: Thank you.

23 THE COURT: Anything else on this motion?

24 MR. NAQVI: Your Honor, may I make one point on the  
25 conversion claim?

1 THE COURT: Sure.

2 MR. NAQVI: First of all, *Byton* is not an outlier.  
3 We cited a few other cases that are similar to *Byton*.

4 I also think it is important to note we're still at the  
5 early stages of this case.

6 Skyryse has challenged Moog's identification of trade  
7 secrets. The confines of what the trade secrets are going to  
8 be in this case, and what the non-trade secret data is, is  
9 still being litigated.

10 Our position at this early stage in the case, we should  
11 be permitted to plead what has been misappropriated as trade  
12 secrets, what has been stolen as to the non-trade secrets, and  
13 that some of these disputes as ownership or property rights,  
14 that is more appropriate for summary judgment later in the  
15 case.

16 THE COURT: Still, the plaintiff still has to  
17 identify -- they can't just give a generalization as to what is  
18 -- I mean, you have to specify what is the trade secret and  
19 what is non-trade secret, that's what I'm looking for.

20 MR. NAQVI: In our amended pleading, we intend to do  
21 that with specificity.

22 THE COURT: On the second motion, the motion to  
23 enforce.

24 I issued a tentative on this one as well.

25 Does somebody want to argue this one?

1 MS. ANDOH: Yes, Your Honor. May I remove my mask?

2 THE COURT: Sure.

3 MS. ANDOH: Thank you, I appreciate that.

4 Your Honor, we appreciate the tentative.

5 We wanted to address with Your Honor -- and Your Honor,  
6 to use a colloquialism, we got the sense from Your Honor's  
7 tentative that you felt that plaintiffs might be getting greedy  
8 in terms of asking for the Polarion drive, Google drive, and  
9 the Git repository.

10 I just wanted to clarify a little bit what was going on  
11 in the meet and confer process and what the concern is, because  
12 it's really quite specific, Your Honor, as to why it is that  
13 the search term proposal doesn't work.

14 It specifically -- we're not trying to be unreasonable,  
15 Your Honor, it's specifically because verbal search terms do  
16 not pick up drawings and schematics. They also don't pick up  
17 structural similarities.

18 For example, Your Honor, if we looked at Your Honor's  
19 prior tentative, I think it was page 17, Your Honor had some  
20 photographs of some charts that you had taken from different  
21 versions of documents, that type of structural similarity --  
22 image similarity would not be picked up by the search term  
23 proposal.

24 THE COURT: How would image similarity be ever  
25 picked up?

1 MS. ANDOH: That is exactly the problem, Your Honor.  
2 The problem is is that it has been taken and used.

3 The other type of similarities that don't get picked up  
4 by search terms are things like structural similarities in the  
5 form of how code is written.

6 THE COURT: Let me ask this: Why didn't you ask for  
7 those pages that have, like, a schematic or something of that  
8 sort?

9 Obviously, that would be overbroad, but then it would  
10 start narrowing it down from that type of request.

11 MS. ANDOH: Because we don't -- the problem for us  
12 with that, Your Honor, we don't know where they are stored on  
13 their systems. We don't know how they are sandwiched. We  
14 don't know anything about how our material was taken and  
15 converted.

16 The examples we have been able to find to date really  
17 come from two sources. One of them is IDS, where search terms  
18 were not used.

19 We have whole laptops that have been produced and we  
20 have been able to find these schematics and drawings on those  
21 laptops and did not need to use search terms in order to locate  
22 them.

23 The other possibility is they have been attached to  
24 e-mails that had text that happened to hit on search terms, but  
25 it hasn't been a situation where our ability to identify use

1 has been that well-aided by search terms.

2 So that is why with the Google drive proposal, Your  
3 Honor, we propose to have them remove certain folders that are  
4 not relevant to the case, but to not do this by search terms  
5 because it's not going to be effective in being able to  
6 identify use.

7 THE COURT: All right. Let me hear a response from  
8 the defense.

9 MR. GROSS: Thank you, Your Honor. May I?

10 THE COURT: Sure.

11 MR. GROSS: Gabe Gross for Skyrise.

12 Your Honor, I will address what my friend for the  
13 plaintiff mentioned first, then I have a few points to make  
14 about the tentative separately.

15 Search terms work. The schematics and the diagrams that  
16 the Court referred to in its tentative that we have seen in  
17 this case, certainly the source code all have text. Source  
18 code is text.

19 I can't think of an example that is just an image,  
20 devoid of text. Search terms work.

21 If there are specific examples of images that are devoid  
22 of text that they are interested in, we are happy to meet and  
23 confer with them.

24 But I think as Your Honor appreciated in the tentative  
25 ruling, the sweeping demands for -- let's take the Google drive

1 example of entire repositories that are used across the  
2 enterprise by dozens and dozens of employees, that is just too  
3 much. It's not reasonable; it's not in line with what the  
4 stipulated order requires.

5           So, I suggest that the order -- tentative order is spot  
6 on here. We will work in good faith with our colleagues to  
7 come up with search terms that work and if they have examples  
8 and reasonable requests to run searches for particular  
9 schematics or images, we will talk to them about that and try  
10 to get them what they think they need.

11           But I think we can have a fair amount of confidence that  
12 search terms will work.

13           With that, Your Honor, if you have questions I would be  
14 happy to respond.

15           THE COURT: Any response?

16           MS. ANDOH: Yeah. First of all, I don't think that  
17 the issue of images and schematics and other non-verbal  
18 searching has been addressed, but I also to want to respond  
19 directly to his statement that source code is text.

20           THE COURT: Yes. Why couldn't you combine key words  
21 and also make a request for schematics within a certain page or  
22 two pages of those words?

23           MS. ANDOH: That assumes, Your Honor, these are all  
24 compiled into these larger documents.

25           We don't know that is true. We don't know whether they



1 are housed in folders; in other words, we're literally shooting  
2 in the dark.

3 Your Honor's proposal would make sense if there was a  
4 presumption that there were large documents in which schematics  
5 are enclosed, but some of these stolen files are just the  
6 drawings. They are just the schematics. There is nothing else  
7 associated with them.

8 And, Your Honor, I would also --

9 THE COURT: I understand. How would one be able to  
10 locate the schematics? You are saying there is no term --  
11 there are no terms associated with the schematics, well then  
12 how could one find the schematics?

13 MS. ANDOH: By looking at the names of folders that  
14 discuss things that would house schematics.

15 THE COURT: I presume that. But if you make the  
16 names of those folders search terms, then those folders would  
17 pop up.

18 MS. ANDOH: That is true, Your Honor. Their  
19 proposal is they would review the materials that are inside the  
20 folders before they produce them to us. And so, in fact, we  
21 don't -- they are not proposing to turn over folders.

22 THE COURT: Why don't you ask them if the search  
23 term is the name of a folder that they will have to inform you  
24 as to whether or not there are any schematics in that folder.

25 If there are, then you guys can meet and confer and see

1 if that leads somewhere.

2 MS. ANDOH: I think that could work with respect to  
3 the schematics piece of it, but there are nuances of it that  
4 are quite critical.

5 One of them has to do with source code, and I want to  
6 give a specific example here.

7 So sometimes the copying of source code, Your Honor, is  
8 not actually the text of the source code. Sometimes it's the  
9 structure.

10 What actually happened in this case, based on what our  
11 experts are telling us is, for example, that with respect to SR  
12 toss, which was one of the proprietary source code files that  
13 we allege was taken and used by Skyryse, the actual code itself  
14 was not what was used.

15 There was a very unique structure to the way that the  
16 code had been put together. Specifically, there were seven  
17 different layers of this code that had been pulled together in  
18 a very specific way.

19 And what we found is that what was renamed SR toss, even  
20 though the physical coding used different commands, that the  
21 structure of those seven layers was almost identical.

22 So the way in which our expert was able to identify that  
23 there was use of the code wasn't by a cut and paste copy.

24 It was done, obviously, by looking at the architecture  
25 while the new code was being put together.

1           That is also the type of use that will not be snagged by  
2 search terms because Skyryse's proposal assumes that the same  
3 actual coding is being used as opposed to the architecture.

4           THE COURT: Let me hear a response from the defense.  
5 What's your response to that?

6           MR. GROSS: Your Honor, this is first time I'm  
7 hearing about that. I do think your order to meet and confer  
8 makes sense.

9           My initial impression is, one, that this is the type of  
10 problem that arises when a plaintiff takes discovery first  
11 before it identifies its trade secrets with specificity and  
12 then tries to conform what it sees to a theory of  
13 misappropriation that doesn't match a previously identified  
14 trade secret.

15           I have reason to believe, based on work we have done  
16 with our experts in learning about this case, that these are  
17 tosses which stands for realtime operating system. They have  
18 been around in the industry for years and years and are well  
19 known and there may be structural similarities between our  
20 tosses when they are -- it sounds like admittedly not  
21 similarities in the code -- it's probably to be expected.

22           So to leave to the conclusion it's evidence of  
23 misappropriation of a trade secret, we think is premature.  
24 That is my initial reaction.

25           But to go back to the point here, one of the reasons

1 search terms work, and they may include the metadata, which is  
2 the information about the files as opposed to their contents  
3 too, Moog has told the Court and stated in its pleadings since  
4 the outset of this case, that it knows from its own information  
5 systems what files its two former engineers allegedly copied.  
6 It knows what files were taken and it knows some information  
7 about them.

8 I go back to the point I was making earlier, based on  
9 Moog's information, what it already knows about its own files,  
10 it cannot only meet and confer with us with about an effective  
11 set of search terms, but if it has schematics, images,  
12 something about the code or its structure that it wants us to  
13 search for, we will be happy to meet and confer with them on  
14 that.

15 This doesn't justify this sort of unlimited searches and  
16 inspections that I think the Court has rightly tentatively  
17 denied.

18 MS. ANDOH: Your Honor, there is yet another set of  
19 problems with the search term proposal, it also assumes that  
20 the relevant information that would hit on search terms hasn't  
21 been intentionally deleted.

22 We have seen a number of instances with respect to the  
23 use of our files --

24 THE COURT: How do you know that?

25 MS. ANDOH: So we know because in the IDS

1 environment, what we found and several --

2 THE COURT: Assuming -- I mean, you might have been  
3 told that has been done, but how would you search to see if  
4 that were done?

5 MS. ANDOH: So, there are several different ways in  
6 which it can be done, and I'm going to be very careful to point  
7 out that I'm not actually our expert, so I'm going to try to  
8 paraphrase this.

9 As I understand it, they were able to match -- they were  
10 able to match documents that were identical, but in the version  
11 that existed in the Moog computer, there was a Moog metadata  
12 field that basically showed that the creation was Moog, Inc. In  
13 other words, there was a metadata data field that was embedded  
14 in the file that showed it was Moog.

15 And when you see it on the Skyrise computer, that  
16 information has been deleted.

17 And as a matter of fact, one of the things that we had  
18 done when we were first trying to negotiate with Skyrise, was  
19 ask them to run the search term "Moog" because we knew that  
20 metadata was embedded in documents that had been unaltered that  
21 were taken from Moog.

22 But in a number of instances that identifying  
23 information has been deleted, so the only way to do the  
24 comparison is based on the actual contents of the document.

25 THE COURT: What is the defense's response?

1 MR. GROSS: First, Your Honor, it sounds like I'm  
2 hearing this in open court for the first time what sounds like  
3 an accusation of spoliation or deletion.

4 We have not met and conferred about this. I'm in no  
5 position to respond, and I have no reason to think it's true.

6 Moog knows and its counsel has known, and this has  
7 happened before my firm got on the case, that using the word  
8 "Moog" as a search term makes no sense in a dispute between two  
9 parties that had a business relationship for a matter of years.

10 There are countless references to Moog that are  
11 understandable and justifiable and have nothing to do with the  
12 claims or defenses in this case.

13 They have provided 100,000 other search terms we can use  
14 and have used and we think that is the way to work on it.

15 This sounds like speculation to me, and certainly  
16 unproven accusations, which is not how you justify broad  
17 discovery. I don't think that they have made the showing they  
18 would need to.

19 THE COURT: I think I understand the position of  
20 both points.

21 What else does either side want to argue?

22 MR. GROSS: I would like to touch very briefly on  
23 the Court's tentative ruling about the sanctions. I just want  
24 to make sure I clarify the record on this.

25 THE COURT: Yes.

1 MR. GROSS: I don't want to argue with Your Honor or  
2 the other side about your tentative decision as to an amount in  
3 sanctions.

4 But this relates to the files deleted by an employee  
5 named Mr. Wang.

6 The Court, on page 4 of its tentative, excuse me, it's  
7 page 3 at the bottom, it stated that Skyryse didn't take steps  
8 to recover the 32 files that were recently recovered, and then  
9 a little higher up on the page, it says that Skyryse --

10 THE COURT: No. I said did not take steps to  
11 recover until it faced Moog's motion for an adverse inference  
12 and other sanctions.

13 MR. GROSS: Yes, Your Honor.

14 I just want to clarify for the record, because I don't  
15 think that is factually accurate.

16 When Skyryse learned what Mr. Wang did against the  
17 company's instruction, express instructions, that he confirmed  
18 and acknowledged he would comply with, it moved into action and  
19 it hired one of the larger forensic firms in the world, FDI, to  
20 do its level best to recover all of the files. It did great  
21 work and it recovered 90 percent of them and then told us that  
22 was all they could do.

23 We shared that information with Skyryse, with the Court,  
24 we litigated this. It was to the best of Skyryse's effort and  
25 its forensic expert's efforts to the best of their efforts and

1 knowledge, it was what could be done, and it wasn't until eight  
2 months later when Moog told us they wanted to meet and confer  
3 about it, because they were going to move for an adverse  
4 inference after we thought the issue had been resolved.

5 Skyryse took the extraordinary step of doing another  
6 search with another global forensics firm at great expense, and  
7 we were somewhat surprised, but very pleased that that firm was  
8 able to do better.

9 So I just want to dispel the notion if there was any  
10 confusion that Skyryse waited for the motion to look for these  
11 files, that is not the case.

12 Skyryse went into action as soon as it became aware of  
13 this. I understand it did take until this spring to recover  
14 those last 32 files, but the 250 files and those 32 were very  
15 much the subject of its good faith efforts as soon as it became  
16 aware of the problem.

17 That is all I have to say about that point.

18 THE COURT: All right.

19 MR. GROSS: Second, Your Honor, on the Google drive  
20 issue.

21 THE COURT: Let me hear a response from the  
22 plaintiff, do you have any thoughts on that?

23 MS. ANDOH: Your Honor, I think that the timeline is  
24 clear on this. As far as the 32 files that were permanently  
25 deleted back in June, they were actually the subject of motion



1 practice over the summer.

2 It is not an inappropriate thing that we didn't  
3 immediately move for an adverse inference over the summer.

4 However, to Your Honor's point and to the point I made  
5 at the last conference, this has always been their  
6 responsibility to address.

7 The fact that those files sat there and they didn't make  
8 any attempt to resuscitate them again until we made this motion  
9 is exactly the point, which is that they never would have made  
10 that second attempt that resulted in their recovery, had we not  
11 made the motion.

12 THE COURT: All right. What does defense counsel  
13 want to argue next?

14 MR. GROSS: Thank you, Your Honor.

15 On the Google drive point, if the tentative is converted  
16 to a final ruling on the Google drive account, I just wanted  
17 some clarification if we could have it, please, from Your Honor  
18 about page 6 of the tentative order.

19 About halfway down the page, closing the first paragraph  
20 at the top, the Court noted that Skyrise is willing to run an  
21 appropriate set of search terms. We obviously just discussed  
22 that, over any Google drive folders shared with Hummingbird  
23 personnel, review the search words, and produce relevant  
24 non-privileged information, and the Court said after that, it  
25 would agree with Skyrise tentatively.

1           What I wanted to ask for clarification about is the only  
2       factual basis for Moog's demand for information from the Google  
3       drive system, which as I mentioned, is used across the  
4       enterprise, was this folder that was shared with Hummingbird.

5           There has been no factual showing of any relevance of  
6       information or a need for an inspection of the entire  
7       enterprise's Google drive system that I think every employee  
8       uses. And I want to just ask for clarification that if the  
9       tentative is finalized, at the very last sentence of that  
10      section where the Court says it would order the parties to meet  
11      and confer regarding a set of search terms to run across the  
12      Google drive account, refers to those Google drive folders that  
13      were shared with Hummingbird, not the entire enterprise-wide  
14      account.

15           THE COURT: What is the plaintiff's response to  
16      that?

17           MS. ANDOH: Well, Your Honor, we put -- we actually  
18      put in the joint report what we were after, which is broader  
19      than that, but certainly narrower than the entire drive, Your  
20      Honor.

21           Let me pull up -- sorry, Your Honor, it will take me a  
22      minute here.

23           It is on page -- it is on page 12 of the joint status  
24      report that was filed at Docket 546.

25           And what it says is that what we're looking for and --

1 the proposal that we put on page 12 -- let me invert it for a  
2 second, because what we were talking about is what we suggested  
3 being removed from the drive.

4 Really at the end of the day what we're concerned with  
5 is flight control, which I don't think they can reasonably say  
6 is not relevant to this case. Documents related to flight  
7 control, which is exactly what was taken, and what our concern  
8 is was used.

9 And then looking at materials that were accessed by  
10 Hummingbird personnel, former Moog employees who went over to  
11 Skyrise, and specific Skyrise employees that we know from the  
12 evidence that has been already available to us in the case,  
13 accessed Moog material.

14 So that is the subset of the Google drive that we  
15 believe they should have to search and produce out of,  
16 irrespective of what the methodology is that they are going to  
17 use in order to do it.

18 THE COURT: What is your response to that?

19 MR. GROSS: There is a problem with that, Your  
20 Honor.

21 THE COURT: Which is?

22 MR. GROSS: There are several.

23 Skyrise's business is to build cutting edge technology  
24 to ensure safe and highly automated flying of aircraft.

25 They said: Give us everything that relates to flight

1 control, and that is the business.

2 I don't know what that means in a way that doesn't go  
3 across the enterprise; that is the main problem.

4 Again, something that was shared with Hummingbird that  
5 they factually identified as potentially relevant, we have no  
6 problem with.

7 But then they are asking us to prove the irrelevance of  
8 other sources within the enterprise-wide Google drive account  
9 in order to justify limiting discovery.

10 I think that flips the burden on its ear. We shouldn't  
11 need to go through every employee, every repository, every  
12 account, and have to explain what is happening in the business  
13 to show why that is not relevant; it's not how discovery works.

14 MS. ANDOH: Your Honor, it's an interesting dilemma.  
15 The reality is there was 1.4 million files taken from us  
16 that relate to flight control.

17 When Skyryse says, well, that is our business, really, I  
18 guess the question that that begs, at least in my mind, is what  
19 exactly is it that is not relevant?

20 You know, they keep arguing burden in terms of this  
21 whole I'm going to go ahead run search terms because they are  
22 not entitled to get this much stuff, but the proportionality of  
23 what it is we're asking them to produce is proportional to what  
24 is actually relevant in the case.

25 The bottom line is if what they are saying that all

1 their files are devoted to the type of flight control  
2 development that is embodied in the files that were stolen from  
3 us, then perhaps what really needs to get done is to have a  
4 better understanding of what it is they propose to exclude.

5 MR. GROSS: Your Honor, that is not what I said. We  
6 did not say, and Skyrise did not admit and deny that everything  
7 that Moog alleges was copied and taken relates to the entirety  
8 of Skyrise's business.

9 What I'm having issue with is counsel's proposal to use  
10 a term as vague of flight control to justify what their  
11 claiming as narrow discovery to a company that its business is  
12 developing flight systems.

13 It doesn't make sense, it is not appropriate. This is  
14 one of the problems, we still don't know what their trade  
15 secrets are a year and a half into this lawsuit.

16 So the shoot-first-aim-later approach inevitably leads  
17 to problems like this.

18 I think we have a solution. I think the solution is the  
19 search term approach and meeting and conferring we have  
20 described.

21 THE COURT: But then you say the search term is not  
22 going to be successful because they want to use overly broad  
23 search terms.

24 MR. GROSS: That's why we meet and confer about it.  
25 That is how the case began. We agreed to and ran over 100,000

1 search terms they proposed, including ones that were wildly  
2 overbroad like "readme.txt," which is a common term that shows  
3 up in every software program, but we will work with them.

4 This does not give them the right to run through the  
5 entire business, when the facts of this case are limited to the  
6 claims and defenses, and should be limited to what they claim  
7 as their trade secrets and identify as their trade secrets.

8 THE COURT: Anything else from either side?

9 MR. GROSS: Finally, thank you, Your Honor, just one  
10 more.

11 On the point about the inspection of the laptops that  
12 were used by Mr. Raithel and Ms. Bird, I just wanted to address  
13 one part of Your Honor's tentative at page 8.

14 In the second paragraph, the Court noted that it  
15 acknowledged Skyryse's privacy concerns with turning over these  
16 laptops, but Moog asserts that its access to laptops would not  
17 be unrestricted, as its review would be subject to the IDS  
18 protocol. That is true. The review would be subject to the  
19 IDS protocol, but I wanted to make sure there was no confusion  
20 about the restraints of the IDS protocol.

21 If an entire laptop is provided, which is what I  
22 understand the Court to have tentatively ordered, the IDS  
23 protocol doesn't put any restraints on the content.

24 It will include personal, private, irrelevant  
25 confidential files that have nothing to do with the claims and

1 defenses of this case.

2 The IDS protocol is a platform for review.

3 The Court may have appreciated that in the tentative,  
4 but we still think that discovery from those laptops may be in  
5 order, but there is a way to find what is relevant, not turn  
6 over the entire machines and every personal calendar or  
7 appointment and photo and what have you on them, which we think  
8 would be more focused and targeted.

9 Thank you, Your Honor.

10 THE COURT: Anything else?

11 MS. ANDOH: Your Honor, on the IDS protocol, I would  
12 point out that the IDS protocol is much more restrictive than a  
13 standard production.

14 The only people who have access to IDS environment are  
15 the experts. There are a limited number of laptops that have  
16 to be specially set up and they have to be in a fixed location  
17 in order to be able to access IDS and perform the review.

18 And in order for materials to be produced out of the IDS  
19 environment, we have to request them and the other side has to  
20 provide them.

21 So in terms of being this perception that there is sort  
22 of, like, it's the same as producing in the sense under a  
23 protective order, it's actually far more restrictive than that,  
24 Your Honor.

25 THE COURT: All right. I will take into

1 consideration arguments from both sides. I will issue a final  
2 ruling some time soon.

3 MS. ANDOH: Your Honor, one other request with  
4 respect to any tasks that are contained in the final order, if  
5 Your Honor would not mind setting some form of dates by which  
6 those tasks should be completed, that would be enormously  
7 helpful to the parties.

8 THE COURT: What you are saying?

9 MS. ANDOH: Whether it has to do with meeting and  
10 conferring or turning over devices, paying sanctions, any of  
11 those types of things, Your Honor.

12 THE COURT: Thank you. I will do that.

13 Is there anything else?

14 MR. GROSS: No, thank you, Your Honor.

15 MS. ANDOH: Thank you, Your Honor.

16 (The proceedings concluded at 1:22 p.m.)

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**CERTIFICATE OF OFFICIAL REPORTER**

COUNTY OF LOS ANGELES     )  
   )  
STATE OF CALIFORNIA         )

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Date: 30th day of June, 2023.

/s/ TERRI A. HOURIGAN

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TERRI A. HOURIGAN, CSR NO. 3838, RPR, CRR  
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